Maloney Associates, Inc. - 14291-93PT
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v.

Town of Hanover

Home Bank FSB - 14263-93PT
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Bryan F. Johnson - 14630-93PT
Seth A. & Eloise Armen - 14703-93PT
Birch Island Camp, Co. - 14704-93PT

v.

Town of Gilford

ORDER

This order relates to the motions to dismiss filed by the municipalities. The municipalities asserted the "Taxpayers'" appeals should be dismissed because the Taxpayers did not comply with RSA 76:16 (Supp. 1993) (all references to RSA 76:16 will be to the 1993 supplement). These appeals, and the RSA 76:16 "Abatement Applications," were filed by property-tax agents

(Agents).[1]

The board consolidated these files for hearing, and now issues a consolidated decision. See TAX 201.21 (the board may consolidate when files raise similar questions of fact or law).

For the reasons stated below, the board dismisses these appeals because the Taxpayers, through their Agents, did not comply with RSA 76:16. The board has written at great length because this is an important issue that results in the dismissal of these appeals.

ISSUE

The issue[2] before the board is:

Can an RSA 76:16-a (Supp. 1993) (all references to RSA 76:16-a will be to Supp. 1993) appeal to this board be maintained where:

a) the Taxpayers filed an RSA 76:16 Abatement Application that included only "canned" language about the grounds for the abatement request and that language did not specify how the individual Taxpayers were actually aggrieved; and

b) the Taxpayers failed to provide the municipalities with specificity and information after the municipalities had requested, in writing, such specificity and information.

We conclude, "no, these appeals cannot be maintained."

FACTS

This matter involves 17 appeals. The Agents filed timely Abatement Applications with the municipalities. The Abatement Applications were mass-produced forms that only included "canned" verbiage when stating the basis for the abatement requests. The Abatement Applications filed by Mr. Simmons of Real Estate Tax Services, Inc. with "Hanover" all stated: An abatement of 1993 taxes as regards to the above-referenced property is sought as the subject property is assessed in excess of its fair market value causing this taxpayer to unjustly share a disproportionate tax burden. Documentation in support of this argument will be delivered for consideration under

[1] Property-tax agents have been authorized to represent parties before the board and municipalities by chapter 393:7, Laws 1994 (copy attached as Appendix A).

[2] Note: The issue raised here is similar to the issue in Hi-Tension Realty Corp. v. Town of Hudson, BTLA Docket No.: 7386-89. Appendix B. There the Abatement Application stated: "We are presently reviewing the assessment on this property and are filing to reserve the right to appeal should we find a discrepancy exists." The board dismissed the appeal, concluding a taxpayer could not reserve the right to appeal. Rather, a taxpayer must know he/she is aggrieved when he/she files for an abatement. The court affirmed the board's decision without a decision. Appendix B. We realize, however, Hi-Tension has no precedential value. Supreme Ct. R. 25(5).

separate cover.

These Abatement Applications were sent to Hanover along with a cover letter, and a sample of each is in Appendix C.

The Abatement Applications filed by Mr. O'Connor of Marvin Poer with "Gilford" all stated: Overvaluation-property is assessed at a value greater than the equalized fair market value and greater than the assessed value of comparable properties.[3] A sample of such Abatement Application is in Appendix D. After receiving the Abatement Applications and before the end of the RSA 76:16 II municipality-review period, the municipalities sent letters to the Agents, asking the Agents to submit information needed by the municipalities to review the abatement requests. Sample letters are in Appendix E. The Agents, however, did not respond to the letters by specifying the basis for the abatement requests. Moreover, the Agents did not submit to the municipalities any supporting information or analysis within the RSA 76:16 II municipality-review period, and as of the motion-hearing date, the Agents still had not presented such information. The parties agreed that some phone calls and brief meetings had occurred about some of the Abatement Applications. These communications, however, were informal, vague, and did not provide to the municipalities the specificity and information needed to review the abatement requests.

The board held a hearing, and the Agents and the municipalities' assessors testified. The Agents admitted that in some cases, the Agents had filed the Abatement Applications based solely on the Taxpayers' requests without any review of whether grounds existed to support an abatement. The Agents also testified that in some cases the analysis had been done but had not been provided to the municipalities. The municipalities' assessors testified they could not review the Abatement Applications, within the RSA 76:16 II municipality-review period, because the Agents did not

[3] In docket numbers 14630-93, 14703-93 and 14704-93, the RSA 76:16-a appeal documents that were filed with this board erroneously stated under "Reasons for Appeal," reasons based on income analysis when the appealed properties are single-family residential, and income analysis rarely, if ever, used in valuing such properties. This appears to be another "canned" form (for commercial properties) that the Agent mistakenly used for these residential properties.

inform them of the bases of the abatement requests.

The Taxpayers then appealed to this board pursuant to RSA 76:16-a, and the municipalities have moved to dismiss.

STATUTORY INTERPRETATION

The issue before the board requires statutory interpretation. Therefore, in performing this analysis, we have relied upon the following rules of statutory interpretation. Statutory interpretation begins with the words themselves, giving the words their plain meaning and keeping in mind the statute's context and purpose. State v. Johnson, 134 N.H. 570, 575-76 (1991). A statute's words are the touchstone of legislative intent. Quality Carpets v. Carter, 133 N.H. 887, 889 (1991). If the statutory words are plain and unambiguous, they must be so interpreted. Concord Steam v. City of Concord, 128 N.H. 724, 729 (1986). Where the words themselves do not disclose intent, the legislative history shall be examined. Chroniak v. Golden Investment Corp., 133 N.H. 346, 350-51 (1990). All statutes concerning the same subject matter must be considered in interpreting any one of them. Barksdale v. Town of Epsom, 136 N.H. 511, 515-16 (1992).

DISCUSSION AND ANALYSIS

To seek an abatement with this board, a taxpayer must, in addition to complying with RSA chapter 74 regarding inventory requirements:

1) timely file a sufficient Abatement Application with the municipality; and:

2) timely file a sufficient appeal document with this board.

The issue here is whether, based on statutory analysis, the Taxpayers complied with the first step. If the Taxpayers did not comply with the first step, the board has no jurisdiction over an appeal and such appeal would have to be dismissed.

To resolve this issue, a close look at RSA 76:16 is required. However, it is essential to review RSA 76:16 in its proper context of the assessment and abatement process. This goes back to one of the rules of statutory interpretation that all statutes concerning the same subject matter

must be considered in interpreting any one of them. Barksdale, 136 N.H. at 515-16. To only focus on RSA 76:16 would start the analysis in the middle of the assessment and abatement process rather than at the beginning as is more appropriate.

THE ASSESSMENT PROCESS

Municipalities must assess all taxable property at its "full and true value", RSA 75:1, which has been interpreted to mean fair market value. See, e.g., Brock v. Farmington, 98 N.H. 275, 277 (1953). Upon completion of assessing the properties, the municipality's assessors are required to swear under oath that they have "appraised all taxable property at its full value ***." RSA 75:7. Moreover, municipalities must yearly review the real estate market and the assessments in the municipality and then adjust the assessments as appropriate. RSA 75:8. These statutes exist to ensure proportional assessments, which are required by the New Hampshire Constitution. N.H. CONST., pt. 1, art. 12, pt. 2, art. 6; see also Opinion of the Justices, 76 N.H. 588, 593, 595 (1911) (the purpose of the requirements for revaluations is to ensure proportional taxation.); Amoskeag Manufacturing Company v. City of Manchester, 70 N.H. 336, 344, 348 (1900) (all taxes must be proportional).

The assessment process also requires the selectmen to have a dialogue with taxpayers in the initial determination of the assessment. As RSA 75:1 states, "the selectmen *** shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination." Additionally, under RSA 74:4 and 10, selectmen must receive evidence of the property by inventory form, and selectmen must hold hearings before April 15 to "receive inventories and hear all parties regarding their ability to be taxed." It is clear from the reading of these statutes, the selectmen are required to not only appraise the property but also to receive evidence from taxpayers that could have a bearing on the initial assessment.

The assessment process is a dynamic process, requiring a) review of the real estate market

and other data; b) review of the properties; c) familiarity with the properties in the municipality; d) familiarity with the assessments in the municipality; and e) an opportunity for input from taxpayers. Once the assessments have been set and tax bills delivered, the abatement process begins.

THE ABATEMENT PROCESS

The abatement process attempts to answer the question: Was a taxpayer's entire estate in the municipality overassessed compared to the general level of assessment in the town? Appeal of Sunapee, 116 N.H. 211, 217 (1985). The abatement process, therefore, is not really about the often heard complaint of "my taxes are too high." Rather the abatement process reviews the assessments that were calculated by the municipality.[4]

Property taxes are based on two factors: 1) the assessment; and 2) the municipality's expenditures. The abatement process only addresses the first factor. See The Brenton Woods Co. v. Carroll, 84 NH 428, 430-31 (1930) (abatement process relates to disproportionality not expenditure issues). Thus, the abatement process must be seen within the context of the assessment process whereby municipalities are required to review information and data to determine what is a fair and proportional assessment. The assessment dialogue provided for in RSA 75:1 and ch. 74 continues forward into the abatement process. This means the taxpayer in the abatement process must show the municipality how the municipality erred in assessing the property.

SUMMARY CONCLUSION

The first step in the abatement process is to timely file a sufficient Abatement Application with the municipality.

We must decide whether the Taxpayers' Abatement Applications and subsequent steps with the municipalities were adequate to fulfill the first step of the abatement process. Before stating our analysis in detail, the board concludes the Abatement Applications and the steps taken by the

[4] Municipalities are also authorized to make abatements based on inability to pay and for other reasons that have been specifically authorized by statute. These grounds are not at issue here.

Taxpayers' Agents concerning those applications were insufficient to comply with RSA 76:16 because the Taxpayers' Agents did not provide the municipalities with an opportunity to review the Taxpayers' abatement request for two reasons: 1) the Abatement Applications themselves did not specify what was wrong with the assessments; and 2) the Agents failed to subsequently provide any specification or any information supporting the requests even after the municipalities asked for such information.

GOOD CAUSE

Municipalities may only abate taxes for "good cause shown ***." RSA 76:16 I. If good cause is not shown, municipalities are not authorized to grant abatements. See Barksdale, 136 N.H. at 511. This term "good cause" was addressed in Barksdale, id. at 514-16. The court stated, except where otherwise statutorily authorized and for inability to pay, disproportionality is the only "good cause" in property-tax abatement requests.

Therefore, to show good cause, a taxpayer must demonstrate how the municipality failed, in its assessing duties, to proportionally assess the taxpayer's property. In other words, because RSA 75:1 requires that assessments be based on market value, taxpayers must produce information that would allow the municipality to review the assessment and to make adjustments when appropriate. Specifically, a taxpayer may show disproportionality by demonstrating the municipality had: 1) an inaccurate physical description of the property; 2) an inaccurate market valuation of the property; or 3) an inaccurate determination of the general level of assessment in the municipality. No such showing was made in these cases.

THE MUNICIPALITY REVIEW PROCESS

Taxpayers must file written Abatement Applications with municipalities so the municipalities can determine if good cause exists for abatement. RSA 76:16 I. Upon receipt of an Abatement Application, a municipality must "review the application and grant or deny the

application in writing within 6 months after the notice of tax." RSA 76:16 II (emphasis added). Taken together, and read in the context of the assessment process, the taxpayer has to provide the municipality with "good cause" otherwise: 1) the taxpayer is not aggrieved; and 2) the municipality cannot review or grant the application. Here, due to the Agents' actions and inactions, the municipalities were unable to perform their reviews at the local level.

READING RSA 76:16 and RSA 76:16-a

In reading RSA 76:16 and its envisioned local-review process, it is essential to note two things: 1) RSA 76:16 and RSA 76:16-a were amended in 1991; and 2) compliance with RSA 76:16 is the first step in the abatement process and an appeal cannot be filed thereafter if RSA 76:16 was not fully complied with.

In 1991, RSA 76:16 was amended by adding paragraph II, which required municipalities to review Abatement Applications and gave the municipalities a time period in which to conduct such reviews. The board was the moving force for this legislation to ensure that municipalities would fulfill their duty to review abatement requests at the local level.

In 1991 while RSA 76:16 was amended, RSA 76:16-a was also amended. These amendments were:

1) amend paragraph I by changing the first word from "if" to "after" and by inserting the phrase "pursuant to RSA 76:16;"

2) extended the appeal deadline to this board to allow municipalities time to review Abatement Applications; and

3) prevented taxpayers from filing with the board until the municipalities had acted on the Abatement Applications or until six months had passed since the notice of tax. (Previously, a taxpayer could simultaneously file with their municipalities and the board!)

The first change to RSA 76:16-a was changing some key words in RSA 76:16-a I. Before the amendment, RSA 76:16-a I read: "If the selectmen neglect or refuse to so abate ***," the

taxpayer may then appeal to the board. (Emphasis added.) Copy of RSA 76:16-a before amendment in Appendix F. After the amendment, RSA 76:16-a I read: "After the selectmen neglect or refuse to so abate, in accordance with RSA 76:16 ***," the taxpayer may appeal to this board. (Emphasis added.) Copy of RSA 76:16-a (Supp. 1993) in Appendix G.

The second change to RSA 76:16-a added two months to the RSA 76:16-a filing deadline to allow municipalities an opportunity to review Abatement Applications before the taxpayer could file with the board.

The third change to RSA 76:16-a was insertion of the following:

> The person aggrieved shall state in its appeal to the board either the date of the municipality's decision on the RSA 76:16 application, or that 6 months had passed since the notice of the tax and that the municipality failed to issue a decision in accordance with RSA 76:16.

When these amendments -- to RSA 76:16 and to RSA 76:16-a -- are read in the context of the assessment and abatement process, it is clear that the legislature intended the local review to be an essential part of the assessment and abatement process and that the board's review was contingent upon a taxpayer complying with the local-review requirements. See House Journal June 12, 1991 at 1148 ("AMENDED ANALYSIS *** The bill also makes explicit the town's existing duty to review and decide abatement applications, specifying a time period to complete such review and decision. The bill amends the appeal procedure by requiring a decision or denial from the municipality before appealing to the board of tax and land appeals."); See House Journal May 14, 1991 at 975 ("This bill sets a time limit for selectmen to review and make a decision on tax abatement requests.")

This statutory review process also makes the board's review (or alternatively the taxpayer's right to appeal to the board) contingent on the taxpayer complying with the local-review requirements. Certainly, RSA 76:16 and RSA 76:16-a describes a two-step process. Taxpayers cannot take the second step to this board without having satisfactorily taken the first step of local review.

APPLICATION OF ANALYSIS TO FACTS

Turning now to the facts here, the Agents:

1) filed with the municipalities canned Abatement Applications without specifying the errors in the assessments, i.e., without providing any basis for "good cause"; and

2) failed to provide the municipalities with any further specificity or information within the RSA 76:16 II local-review period even after the municipalities requested such information.

Taken together, we find these factors require dismissal of the appeals. Otherwise, the board would be making a mockery of the local-review requirement created by the legislature. Local review is a statutory requirement, and why have a local review if taxpayers are not required to make some showing of disproportionality? Why would the legislature establish local review if the board was to be the first forum to actually review the matter? In these cases, the statutes provided time for review by the municipality, and the municipality requested information from the Taxpayers but the Taxpayers failed to reply. This is certainly not what the legislature intended, and because of this, we are dismissing these appeals. We also conclude these defects cannot now be cured. Here is a more detailed explanation.

The board researched whether there were any New Hampshire cases supporting or opposing dismissal at the review level for failure to provide the local level with "good cause." The board only found one case -- Melvin v. Weare, 56 N.H. 436, 439 (1876). In Melvin, the court held dismissal was not proper because the "legislature could hardly have intended that the court should look into the evidence produced before the selectmen, to see whether there was `good cause shown.'" Id. at 439. The court simply stated Melvin (the taxpayer) had filed the correct form, and then the court discussed a local review "process" that included the taxpayer informing the selectmen of the errors in the assessment. Id.

One could read Melvin as requiring denial of these motions here, especially given the language: "The legislature could have hardly have intended that the court should look into the evidence produced before the selectmen to see whether there was `good cause shown.'" However, three key factors support a contrary reading: 1) the 1991 amendments to RSA 76:16 and 16-a; 2) the notice given at the local level to the Taxpayers that provided Taxpayers with an opportunity to correct any error; and 3) we are not reviewing evidence that was presented at the local level.

First, the legislative changes in 1991 are discussed above. The abatement statutes cited in

Melvin, Gen. Stats. 1867, section 10 and 11, ch. 53, are in Appendix H. A comparison of the 1867 and 1993 statutes and of the procedures followed in 1872 and 1993 procedures support the inapplication of Melvin to these motions.

Second, one recurring theme of Melvin was municipalities should not be able to raise procedural errors at the review level unless the municipalities had informed the taxpayers of the errors when the matter was at the local level. Id. at 437, 438, 440 (concurring opinion). This is not a concern before us because the municipalities informed the Taxpayers of the defects.

Third, the board here is not reviewing the evidence produced at the local level. The board, moreover, does not think we should do that. Here, however, there was no evidence and no statement of what was erroneous in the assessments. In other words, the board is not reviewing evidence but is only stating the Agents failed to even meet the minimum requirements.

Based on the above analysis, we conclude Melvin does not require denial of the motions. We now turn to further analysis.

An argument could be made that the Abatement Applications themselves were per se defective. RSA 76:16 treats these applications as essential -- "the selectmen or assessors shall review the application and grant or deny the application ***." (Emphasis added.) Here, the Abatement Applications did not provide the municipalities with any information about the bases of the abatement requests. We have not, however, adopted this position. Instead, we have looked at the entire local-review process and have concluded the Taxpayers did not participate in that process both by failing to file sufficient Abatement Applications and by failing to provide subsequent information within the statutory time period of review by municipalities.

We have not adopted a per se defective approach because: 1) we read RSA 76:16 to describe a process; 2) the sanctions of the loss of appeal rights based solely on a questionable Abatement Application seems rather harsh; 3) the local-review process is by its very nature more informal than the review by this board or the superior court; and 4) the two-month filing deadline is short and cannot be extended, thus, it could be reasonable for a taxpayer not to be fully prepared

within the two month filing period.

Looking at the process here, we find the Taxpayers failed to comply with the requirements of that process. As shown on the attached letters, Appendix E and as testified to by the municipal officials, the municipalities attempted to obtain information to review the Abatement Applications pursuant to RSA 76:16 II, but the Agents failed to supply any information that would allow the municipalities to review the Abatement Applications. Clearly, these steps were insufficient to comply with RSA 76:16.

Here is an analogy to help explain the board's analysis. A timely filed Abatement Application is the key to the door of local review. When the Abatement Application includes sufficient information for the municipality to review the assessment, the door is opened upon filing of the Abatement Application. But when the Abatement Application does not include such sufficient information, the door only opens if the taxpayer, within the review time period, provides the municipality with the information necessary for the municipality to review the abatement request. Once in the local-review room, the unhappy taxpayer can then enter the appeal door but this door can only be entered after passing through the local-review room.

In these cases, we have the added factor that upon insertion of the key, the municipalities answered at the door, "we need more information before we can let you in." Despite this request, the Taxpayers did not provide the information, and the door to local review never opened. Thus, the Taxpayers did not have access to local review or board review.

Mr. Bigg's attorney objected to the dismissal on several grounds, including an objection that there is no standard established that states what a taxpayer is required to submit to the municipality. The standard, however, does exist and can be gleaned from the statutes on assessments and abatements. Simply put, the taxpayer must state why he/she thinks the assessment is disproportional or illegal and this statement must be sufficient enough for the assessing officials to review the assessment and the Abatement Application. (See previous discussion on "good cause.") In general, the board agrees only minimal information is required to file and to maintain a local

abatement request, and we do not intend to examine specific reasons and circumstances provided the taxpayer gives the municipality some basis for review. Here, however, the taxpayers did not provide any reasons and did not provide any information the assessors could review. Clearly, this was insufficient.

BOARD'S RULE AND FORMS

The board has decided this matter without relying on the board's administrative rules. We specifically note TAX 203.02, which governs Abatement Applications and describes what information should be in an Abatement Application. TAX 203.02 is in Appendix I. Agent Bigg's attorney challenged whether the board, by rule, could mandate what was required for a form that is to be filed at the local level, i.e., the Abatement Application. In drafting these rules, the board was aware of this question, but we need not resolve it because we have decided these motions based solely on statutory analysis without any reliance on our rules.

However, we note the Agents were sent copies of the board's proposed and final rules, and these rules described what the board thought was required for a sufficient Abatement Application. The board also prepared a form Abatement Application that was provided to all municipalities, and Agent O'Connor actually used this form in filing with Gilford. The form, see Appendix J, under "Reasons for Appeal" states:

> SECTION E. Reasons for Appeal
>
> The Taxpayer has the burden to prove disproportionality. Therefore, state with specificity, the reasons supporting your abatement request. Statements such as "taxes too high", "disproportionately assessed" or "assessment exceeds market value" are insufficient.

Generally, specificity requires the Taxpayer to present material on the following (all may not apply):

1) physical data -- incorrect description or measurement of property;

2) market data -- the property's value on the April 1 assessment date, supported by comparable sales or a professional opinion of value; and/or

3) assessment data -- the property's assessment exceeds the general level of assessment shown

by
comparing the property's assessment with assessments on other properties in the municipality.

Attach additional sheets if needed.

While we have not relied on our rules or form in this decision, the Agents cannot plead they were not aware of the board's view of what constituted a sufficient Abatement Application.

AGENTS

The board has also attempted to decide this matter without references to the fact that the Taxpayers are represented by Agents. Nonetheless, it could be argued these Agents, who handle numerous abatement requests, should be required to know and comply with statutory requirements.

CONCLUSION

Based on the above analysis, we find the appeals must be dismissed for failure to comply with RSA 76:16.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Paul B. Franklin, Member

_____
Ignatius MacLellan, Esq., Member

_____
Michele E. LeBrun, Member

SPECIALLY CONCURRING

I agree with the board's analysis and conclusion, but I admit to some lingering doubts about these dismissals.

First, I wonder whether the board has the authority to dismiss these appeals when: (a) there

is no specific statutory authorization for such dismissals; (b) RSA 76:16 does not specify what a taxpayer must file or show at the local level; (c) the errors occurred while the matters were before the municipalities; and (d) the municipalities did not inform the Agents of the consequences of not supplying the requested information.

My starting point is simple -- the board's powers are entirely statutory. Appeal of Gillin, 132 NH 311, 313 (1989). There is no provision that expressly authorizes the dismissal by the board under these facts. Compare this with RSA 74:7-a I, which states that an individual who fails to comply with RSA chapter 74 shall lose the right to appeal.

I note, however, that the board can dismiss appeals when:

1) the Abatement Application was not timely filed; or

2) the abatement request was made orally.

The question is whether we can reach backwards and down to the municipal level to determine the sufficiency of something not spelled out in the statutes, i.e., the RSA statutes do not define what is required of an Abatement Application or what is required for the selectmen to review an Abatement Application. (Note: The legislature has amended RSA 76:16, Chapter 91, Laws of 1994, to include new requirements for Abatement Applications.) Appendix K.

I agree these Agents failed when they used canned language in the Abatement Applications, and in some cases, they even filed Abatement Applications without any or adequate review of the basis for such request. Moreover, the Agents, even after municipality request, failed to supply required information to allow review. But can this board reach down to the local level, review what happened and dismiss the appeals? Did the legislature intend for the board to review what happened at the local level? These are questions that I am not fully able to answer. Melvin, 52 N.H. at 439 ("The legislature could hardly have intended that the court should look into the evidence produced before the selectmen, to see whether there was `good cause.'")

I also have concerns about dismissing these appeals because of the administrative burden placed on us. Where the basis of the requested dismissal requires making factual findings, the

board must notify the parties and then hold a factual hearing. Such a procedure would require the board to spend significant time reviewing the steps that occurred at the local level rather than focusing on the appeals now before the board. Of course, this problem would be removed if these Abatement Applications were found to be per se insufficient.

Another lingering doubt concerns the notice provided by the municipalities to the Taxpayers, especially while both Taxpayers and municipalities did not treat the local review as formally as the board's process. Yes, the Agents had notice of what the board expected to be in an Abatement Application, and they failed to so comply. Yes, the municipalities informed the Agents of the need for additional information. But, the Agents were not apprised of the consequences for their failure. I would be less concerned if the municipalities' notice to the Agents included a statement that failure to provide this information will result in the municipality moving for a dismissal before the board or the superior court. See Duclos v. Duclos, 134 NH 42, 44-45 (1991) (constitutionally sufficient notice requires that it be reasonably calculated to give the litigant actual notice of the issue so the litigant could make an informed decision as to how to proceed). Despite my doubts, I have concurred because if the board had reached a contrary result, the board would be required to, in essence, ignore the legislative requirement for a local review, especially given the clear legislative message in 1991.

_____

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Patrick Bigg, representative for the Hanover Taxpayers; Wright W. Danenbarger, Esquire; representative for Maloney Associates, Inc., Chairman, Hanover Board of Selectmen; John O'Connor, representative for the Gilford Taxpayers; and Chairman, Gilford Board of Selectmen.

_____

Melanie J. Ekstrom, Deputy Clerk

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v.

Town of Gilford

ORDER

This order relates to the "Taxpayers'" rehearing motions, which are denied for failing to show good cause for rehearing. See RSA 541:3.

Most of the Taxpayers' arguments were addressed, at length, in the board's decision. This order will briefly discuss the following arguments raised by the Taxpayers:

1) the board's review of local actions;

2) the constitutional arguments; and

3) the estoppel argument.

This order will also briefly present the thrust of the board's decision. Board's Review of Local Action

The Taxpayers argued the board's decision was an impermissible review of local matters and actions. The board addressed this in the decision. See especially pages 13-14. As we stated, the board was not reviewing any evidence presented to the "Towns" because the Taxpayers provided none. Additionally, the board was not reviewing the reasons or the bases for the abatement requests because the Taxpayers provided none.

The Taxpayers also asserted the board was powerless to determine if a taxpayer had complied with RSA 76:16. Not so. The board does not have jurisdiction over a tax appeal unless a taxpayer has first complied with RSA 76:16. Thus, the board is required to determine whether RSA 76:16 has been complied with for the board to ensure jurisdiction exists.

The legislature set up a process with local review and then state review. The board's jurisdiction is, therefore, appellate jurisdiction. Appeal of Sunapee, 126 N.H. 214, 216 (1985). The Taxpayers' argument, in essence, states: taxpayers are not required to do anything locally but file a standardized form document, and if they do so, they have complied with RSA 76:16 and can then appeal to the board. The board disagrees.

The local review process, as required by the legislature, must have some meaning, and thus, there are requirements beyond just filing a "canned" form.

Taxpayers' Constitutional Arguments

The Taxpayers raised numerous constitutional arguments. However, the issue before the board was about statutory matters, not constitutional matters. Concerning the constitutional issues, the board makes the following observations. The Taxpayers certainly had a constitutional right to appeal their taxes. RSA 76:16, 16-a and 17 describe this appeals process. The Taxpayers,

however, are solely responsible for complying with the appeal statutes. Neither the Towns nor the board are constitutionally required to advise or to ensure that the Taxpayers comply with the statutory requirements to perfect an appeal. To accept the Taxpayers' arguments, one would have to conclude that the Towns had the constitutional obligation to advise the Taxpayers that the Taxpayers' failure to comply with the statutes would result in the loss of their appeals. The board doubts this is a constitutional requirement. The Taxpayers, by their own actions and inactions, failed to comply with the statutory requirements to perfect an appeal. Having failed to perfect an appeal, the Taxpayers lost their constitutional right to appeal and thereby lost the procedural rights they now claim they were entitled to. Simply put, taxpayers who comply with the statutory requirements acquire: 1) the right to appeal; and 2) the right to the procedural safeguards in the appeal process. However, taxpayers who fail to comply with the statutes have neither right.

Estoppel

The Taxpayers also raised an estoppel argument. They asserted the Towns should be estopped from challenging the Taxpayers' compliance with RSA 76:16 because the Towns continued to deal with the Taxpayers until the motions were filed.

The board has reviewed several cases on municipal estoppel. E.g., Hansel v. City of Keene, 138 N.H. 99 (1993); Aranosian Oil Co. v. City of Portsmouth, 136 N.H. 57 (1992); City of Concord v. Tompkins, 124 N.H. 463 (1984). We do not see how estoppel applies in this particular case.

We admit that local abatement review is often an informal process. Here however, a specific written request was made to the Taxpayers' professional representatives to provide additional information, and the representatives failed to provide the required information.

Thrust of the Board's Decision

In analyzing and deciding the rehearing motions, the board considered whether it could change its prior decision consistent with the Taxpayers' rehearing request. The board decided it could not because to change the decision would require us to conclude that the local-review process

is meaningless and is without any requirements whatsoever. The board, viewing itself as an appellate board, is unable to conclude that the local-review process is meaningless. Further, the board concludes that if it were to accept the Taxpayers' position, then any taxpayer could file a simple sheet of paper without giving any reason whatsoever and without providing the municipality with any reason for granting an abatement and then that taxpayer, having failed to engage in any local review, would be allowed to appeal to this board. This result seems absurd to the board.

Final Note

On January 9, 1995, the Taxpayers filed an addendum to their rehearing request. The addendum included a January 3, 1995 letter from Hanover to one of the representatives. The letter, which related to a 1994 abatement request (not before the board), asked the representative to supply certain specific information or the town would move to dismiss any appeal that might be filed. The Taxpayers argued in the addendum that this letter demonstrates what is wrong with the board's dismissal in the above cases. Limiting our comments strictly to the letter as supporting the Taxpayers' position, we make the following observations, hoping our remarks will clarify the board's order for all parties.

Hanover's assessor has completely misunderstood the board's order. The board's order was very limited--taxpayers must provide some basis for an abatement request. If no basis whatsoever is provided, the appeal may be dismissed. This does not mean a municipality can require a taxpayer to submit certain information or documentation that the municipality thinks should be submitted. There is no basis in the law or the board's order for such a position. The taxpayer must submit some basis, but the municipality cannot dictate the basis or the supporting information that a taxpayer must file.

As our rules indicate, the board will not review the arguments or evidence presented to a municipality during local review. TAX 203.03(g) states: "Concurrent specificity [of the bases for abatement] between the Abatement Application and the Appeal Document is not required ***." This rule was promulgated because the board does not and will not review what occurs at the local

review, except where the taxpayer provides no basis (as occurred here).

If the board had received a dismissal motion from Hanover based on the January 1995 letter, we would not have granted such a motion unless the taxpayer had not provided any basis for the abatement request.

Conclusion

Based on the above, the board denies the rehearing motions.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing order had been mailed this date, postage prepaid, to Patrick Bigg, representative for the Hanover Taxpayers; Wright W. Danenbarger, Esq., representative for Maloney Associates, Inc.; Chairman, Hanover Board of Selectmen; John O'Connor, representative for the Gilford Taxpayers; and Chairmen, Gilford Board of Selectmen.

Dated: January 27, 1995

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Valerie B. Lanigan, Clerk